

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **SEN. MIKE TAYLOR**, on March 14, 2003 at 3 P.M.,
in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Keith Bales, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Ken (Kim) Hansen (D)
Sen. Sam Kitzenberg (R)
Sen. Walter McNutt (R)
Sen. Linda Nelson (D)
Sen. Gerald Pease (D)
Sen. Mike Taylor (R)
Sen. Joseph (Joe) Tropila (D)

Members Excused: Sen. Corey Stapleton (R)

Members Absent: None.

Staff Present: Jennifer Stephens, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 531, 3/12/2003; HB 720,
3/12/2003
Executive Action:

HEARING ON HB 531

Sponsor: SEN. DAN HURWITZ, HD 40, WHITE SULPHUR SPRINGS

Proponents: JOHN BRUEGGEMAN, HD 64, POLSON
Elmer Hanson, Riverside Ranch
Bill Galt, MT Department of Transportation
Phil Wirth, Rancher
Ben Hurwitz, Rancher
John Bloomquist, MT Stockgrowers
Robin Kirscher, MT Cattlewomen
Jim Lippert, Attorney, Big Timber

Opponents: Larry Peterman, MT Fish, Wildlife, and Parks, (FWP)
Robert Throssell, MT Wildlife Federation
Janet Ellis, MT Audubon

Opening Statement by Sponsor:

SEN. DAN HURWITZ, HD 40, WHITE SULPHUR SPRINGS, said the bill was brought forth because of the damage that is done to ranch land due to game animals. The bill would allow ranchers to fly aircraft in order to haze game off of their land.

Proponents' Testimony:

JOHN BRUEGGEMAN, HD 64, POLSON, urged the committee to pass the bill. He explained that if the problem of game grazing is not solved, it will harm the ranching industry in Montana.

Elmer Hanson, Riverside Ranch, spoke in favor of the bill. He also submitted written testimony, **EXHIBIT(ags54a01)**.

Bill Galt, Rancher, White Sulphur Springs, explained in the last 4 to 5 years, the elk population on his ranch has tripled. He said there are times when he has over 2,000 head of elk on his land. He said this amount of elk has diminished the amount of grass he has for his cattle. He said the bill would give him one more tool to control game animals.

Phil Wirth, Rancher, said he, too, has problems with game on his land. He said that MT Fish, Wildlife, and Parks (FWP) is not doing enough to control the elk population. He added that it wouldn't be a big problem if he was not interfered with when he tries to do something about it; i.e., move the animals. He said he had a total of \$20,000 in damages last year.

Ben Hurwitz, Rancher, submitted written testimony, **EXHIBIT (ags54a02)**.

John Bloomquist, MT Stockgrowers, concurred with previous testimony and added that hunting alone will not control the elk population.

Robin Kirscher, MT Cattlewomen, concurred with previous testimony and urged the committee to pass the bill.

Jim Lippert, attorney, Big Timber, explained that the US constitution grants all citizens the inalienable right to protect their property. He said HB 531 would provide farmers and rancher the ability to protect their land. He added that the statutes on the books at present don't necessarily allow a farmer or rancher to protect his property at all times of the year. He also said that he finds it contradictory that we allow people to use propane cannons to shoo geese off of golf courses, yet farmers and ranchers are not allowed to scare game off of their land.

Opponents' Testimony:

Larry Peterman, MT Fish, Wildlife, and Parks, submitted written testimony, **EXHIBIT (ags54a03)**.

Robert Throssell, MT Wildlife Federation, concurred with **Mr. Peterman's** testimony. He added his concern that farmers and rancher will only compound the problem by forcing animals onto other peoples' land. He ended by saying that HB 531 pits neighbor against neighbor.

Janet Ellis, MT Audubon, said the bill would not do what the proponents want it to do. Specifically, hazing animals will just move the animals around, not lessen the amount of game inhabiting farmers' land. She said she is also concerned about the fencing provisions because she thinks it goes against a number of court precedents.

Questions from Committee Members and Responses:

SEN. JOE TROPILA asked **Mr. Wirth** if he ever filed a complaint with Fish, Wildlife and Parks concerning game damage. **Mr. Wirth** said he has filed a number of complaints. He explained that typically, a game warden would come by the house and fill out a report. He said the only thing FWP would do to help the situation was put his name on a list so hunters could contact him for permission to hunt on his land. **SEN. TROPILA** further asked

if **Mr. Wirth** ever received monetary compensation. **Mr. Wirth** said no.

{Tape: 1; Side: B}

SEN. KEN HANSEN asked **Mr. Wirth** how far the elk migrate when they are hazed. **Mr. Wirth** said he tries to push the elk at least 2 to 3 miles away from his property. **SEN. HANSEN** further asked **Mr. Wirth** if he thought game hazing would pit neighbor against neighbor. **Mr. Wirth** said he didn't think it would be a problem unless you were hazing game directly onto someone else's land.

SEN. LINDA NELSON asked **Mr. Wirth** if the right to haze might be abused; i.e., ranchers might haze elk into a large group for easier hunting. **Mr. Wirth** said there could be hazing abuses, but that situation could be addressed if it occurs.

SEN. TAYLOR asked **REP. HURWITZ** if he would be opposed to amending the bill to prohibit hazing during hunting season. **REP. HURWITZ** said he would consider the amendment. He added that farmers and ranchers are having most of their problems during early spring.

SEN. TAYLOR asked **Mr. Peterman** if the problem might be helped if hunters could only shoot female elk. **Mr. Peterman** agreed that that kind of regulation might help, however, it is a rule that is hard to regulate.

SEN. GERALD PEASE asked **Mr. Peterman** how many elk tags are sold each year. **Mr. Peterman** said he didn't know.

SEN. PEASE asked **Mr. Wirth** if he allows hunting on his property. **Mr. Wirth** said yes, he does.

SEN. NELSON asked **REP. HURWITZ** why permits would be granted on a permanent basis. **REP. HURWITZ** explained that the permit limitations would be determined under federal statute. **SEN. NELSON** asked **REP. HURWITZ** the length of time he would find reasonable for the permit. He thought 2 weeks sounded reasonable. **SEN. NELSON** asked **REP. HURWITZ** if he would be agreeable with an amendment that required written permission from a farmer or rancher's neighbors before he/she hazed elk. **REP. HURWITZ** said he would consider that type of language being added to the bill.

SEN. HANSEN asked **Mr. Peterman** if FWP responds to all reports of game damage. **Mr. Peterman** said that the department is suppose to respond to a complaint within 48 hours of the incident. With each complaint, they respond as necessary. He passed out

statistics describing typical game animal damage,
EXHIBIT(ags54a04) .

Closing by Sponsor:

SEN. DAN HURWITZ, HD 40, WHITE SULPHUR SPRINGS, summarized the bill and closed.

HEARING ON HB 720

Sponsor: **SEN. DAN HURWITZ, HD 40, WHITE SULPHUR SPRINGS**

Proponents: **John Bloomquist, MT Stockgrowers**
 Elmer Hanson, Riverside Ranch, White Sulphur
 Springs
 Dave Donohue, Water Hydrologist
 Robert Hanson, MT Farm Bureau
 Robin Kircher, MT Cattlemen
 Joe Michaletz, Helena
 Jim Lippert, Attorney, Big Timber
 Mike Murphy, MT Water Resources Association

Opponents: **Bob Lane, Attorney, Fish, Wildlife, and Parks**
 Bob Gilbert, Walleyes Unlimited
 John Wilson, MT Trout Unlimited
 Mike McClain, Clark Fork Task Force
 Robin Cunningham, Fishing Outfitters Assn. of MT
 Robert Throssell, MT Fisheries Society
 Janet Ellis, MT Audubon
 Mike Geary, Smith River Outfitter

Opening Statement by Sponsor:

SEN. DAN HURWITZ, HD 40, WHITE SULPHUR SPRINGS, explained that HB 720 would establish what is necessary for a rancher to change a point of diversion so that he can take his water out of an irrigation ditch in order to put it into a pivot. He stressed that the new technique would make better use of the water. He further explained that the reason why this change is so difficult is because it requires individuals to give up part of their water rights. He also outlined the implications of current well drilling.

Proponents' Testimony:

John Bloomquist, MT Stock Growers, explained that HB 720 would change the Department of Natural Resources and Conservation's

(DNRC) application process. Specifically, the waiting period would be altered. The bill would also change the objection statute. He outlined other benefits of the bill, such as the process taken to measure in-stream flow. He ended by saying that the bill would not reduce in-stream water rights; it would rather make information more accessible for applicants.

{Tape: 2; Side: B}

Elmer Hanson, Riverside Ranch, White Sulphur Springs, said he filed for water appropriation nearly 2 years ago and is still waiting for action to be taken. He would like to see the current statute changed.

Dave Donohue, Water Hydrologist, explained he had worked for **Mr. Hanson**. He agreed that there needed to be a change with the DNRC's application process.

Robert Hanson, MT Farm Bureau, said the bill would resolve many of the problems on his ranch. He is in favor of the bill because it sets up a number of requirements that must be met before money is spent developing a well.

Robin Kircher, MT Cattlemen, concurred with previous testimony.

Joe Michaletz, Helena, said he is in favor of the bill because it requires the DNRC to work on a set time schedule. He added it has always been his experience in the past that the DNRC took too much time processing applications.

Jim Lippert, Big Timber, said there are many people who have been waiting over two years for permits. He added if the hearing had been scheduled outside of calving season, there would be many more proponents present to share their frustrations with the current law.

John Bloomquist rose to speak on behalf of **Mike Murphy, MT Water Resources Association**, who wanted to go on record as a proponent of HB 720.

Opponents' Testimony:

Bob Lane, Attorney, Fish, Wildlife, and Parks, submitted written testimony, **EXHIBIT (ags54a05)**.

Bob Gilbert, Walleyes Unlimited, explained that all people have the right to use water, including fishermen and others who enjoy water activities. He said that he has no problems with section 1

of the bill, but would like to see changes in the rest of the bill. He said he feels the bill would make second-class citizens out of water right owners. He emphasized that the water rights do not belong to the DNRC, rather they belong to the people who own the right. He is concerned that the bill will impact the sportsmen in the state of Montana as well as all taxpayers. He suggested that the new standards proposed in the bill be met by all water right owners.

John Wilson, MT Trout Unlimited, concurred with the testimony of previous opponents. He also submitted written testimony, **EXHIBIT (ags54a06)**.

Mike McClain, Clark Fork Task Force, submitted written testimony, **EXHIBIT (ags54a07)**.

{Tape: 3; Side: B}

Robin Cunningham, Fishing Outfitters Assn. of Montana, said the bill would drastically affect MT anglers and outfitters. He provided a graph of angling income in Montana, **EXHIBIT (ags54a08)**.

Robert Throssell, MT Fisheries Society, concurred with previous testimony. He said the bill is a major shift from current statute.

Janet Ellis, MT Audubon, stood in opposition of the bill.

Mike Geary, Smith River Outfitter, stood in opposition of the bill.

Informational Testimony:

Jack Stults, Director, DNRC, announced that the DNRC was not taking a stance on the bill. He said he was available to answer any questions. He also passed a graph out to the committee, **EXHIBIT (ags54a09)**.

Questions from Committee Members and Responses:

SEN. DALE MAHLUM asked **Mr. Lane** if he said that present law protects the person who is taking illegal water. **Mr. Lane** said he didn't mean to say that if he did because the statement is false.

SEN. TROPILA asked **Mr. Bloomquist** if section two of the bill could be amended out since most of the opponents were only in

objection to that part of the bill. **Mr. Bloomquist** said that decision was not up to him.

SEN. MCNUTT asked **Mr. Bloomquist** if the bill would limit current stream flow rules and surface appropriations. **Mr. Bloomquist** said he didn't think the bill had anything to do with that subject.

Closing by Sponsor:

SEN. DAN HURWITZ, HD 40, WHITE SULPHUR SPRINGS, said he would rather not have section 2 altered. He closed on the bill.

ADJOURNMENT

Adjournment: 6 P.M.

SEN. KEITH BALES, Chairman

JENNIFER STEPHENS, Secretary

KB/JS

EXHIBIT (ags54aad)